UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:17-cr-420-T-35AEP

KENDRICK EUGENE DULDULAO
and
MEDARDO QUEG SANTOS
_____/

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

The Duty to Follow Instructions and the Presumption Of Innocence

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendants or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The Second Superseding Indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. The Defendants do not have to prove their innocence or produce any evidence at all. A Defendant does not have to testify, and if a Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find a Defendant not guilty.

Definition of "Reasonable Doubt"

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning a Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that a Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal

difference in the weight you may give to either direct or circumstantial evidence.

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

Impeachment of Witnesses

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

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But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

A defendant has a right not to testify. But since the Defendant did testify, you should decide whether you believe the Defendant's testimony in the same way as that of any other witness.

Credibility of Certain Witnesses

You must consider some witnesses' testimony with more caution than others.

For example, a witness may testify about events that occurred during a time when the witness was using addictive drugs, and so the witness may have an impaired memory of those events. Paid informants, witnesses who have been promised immunity from prosecution, or witnesses who hope to gain more favorable treatment in his or her own case may have a reason to make a false statement in order to strike a good bargain with the Government.

So while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

Testimony of a Witness with Plea Agreement

You must consider some witnesses' testimony with more caution than others.

In this case, the Government has made a plea agreement with an alleged Codefendant in exchange for his or her testimony. Such "plea bargaining," as it's called, provides for the possibility of a lesser sentence than the alleged Codefendant would normally face. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

But a witness who hopes to gain more favorable treatment may have a reason to make a false statement in order to strike a good bargain with the Government.

So while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

And the fact that a witness has pleaded guilty to an offense isn't evidence of the guilt of any other person.

Identification Testimony

The Government must prove beyond a reasonable doubt that the Defendant was the person who committed the crime. If a witness identifies a Defendant as the person who committed the crime, you must decide whether the witness is telling the truth. But even if you believe the witness is telling the truth, you must still decide how accurate the identification is. I suggest that you ask yourself questions:

- Did the witness have an adequate opportunity to observe the person at the time the crime was committed?
- How much time did the witness have to observe the person?
- How close was the witness?
- Did anything affect the witness's ability to see?
- Did the witness know or see the person at an earlier time?

You may also consider the circumstances of the identification of the Defendant, such as the way the Defendant was presented to the witness for identification and the length of time between the crime and the identification of the Defendant.

After examining all the evidence, if you have a reasonable doubt that the Defendant was the person who committed the crime, you must find the Defendant not guilty.

Expert Witness

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

Introduction to Offense Instructions

The Second Superseding Indictment charges seven separate crimes, called "counts." Each count has a number. You'll be given a copy of the Second Superseding Indictment to refer to during your deliberations.

Count One charges that the Defendants knowingly and willfully conspired to distribute and dispense, and cause the distribution and dispensing of, controlled substances, primarily oxycodone, hydromorphone, morphine, methadone, and hydrocodone, Schedule II controlled substances, and alprazolam, a Schedule IV controlled substance, not for a legitimate medical purpose and not in the usual course of professional practice.

Counts Two and Counts Five through Nine, respectively, charge the commission of what are referred to as substantive offenses. Count Two charges that ***Dr. Duldulao*** did knowingly and intentionally distribute and dispense, and cause the distribution and dispensing of, Schedule II controlled substances not for a legitimate medical purpose and not in the usual course of professional practice.

Counts Five through Nine charge that ***Dr. Santos*** did knowingly and intentionally distribute and dispense, and cause the distribution and dispensing of, Schedule II and IV controlled substances not for a legitimate medical purpose and not in the usual course of professional practice.

But first note that the Defendants are not charged in Count One with committing a substantive offense – they are charged with conspiring to commit that offense.

I will also give you specific instructions on conspiracy.

Controlled Substances: Conspiracy
21 U.S.C. § 846

It's a separate Federal crime for anyone to conspire to knowingly possess with intent to distribute and dispense controlled substances.

Oxycodone, hydromorphone, morphine, methadone, hydrocodone, and alprazolam are "controlled substances" within the meaning of the law.

Section 841(a)(1) makes it a crime for anyone to knowingly and intentionally distribute and dispense, and cause to be distributed and dispensed, a controlled substance outside the usual course of professional practice and not for a legitimate medical purpose.

To "distribute" means to deliver a controlled substance to another person, with or without any financial interest in the transaction.

To "dispense" means to deliver a controlled substance to an ultimate user by, or pursuant to, a lawful order of a practitioner, including the prescribing and administering of the controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for delivery.

The term "practitioner" means a physician, pharmacist, or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he or she practices to distribute or dispense, or cause to be distributed or dispensed, controlled substances in the course of professional practice.

Because willfulness is an element to the charge of conspiracy, the following instruction concerning good faith applies to Count One of the Second Superseding Indictment. Additionally, the following instruction concerning good faith applies to Counts Two and Five through Nine, but only regarding whether each Defendant charged in that count subjectively believed that he was distributing the controlled substances for a legitimate medical purpose.

Good faith in this context means good intentions and the honest exercise of good professional judgment as to a patient's medical needs. Good faith connotes an observance of conduct in accordance with what the physician believes to be proper medical practice. In determining whether the Defendant acted in good faith, you may consider all of the evidence in the case that relates to that conduct.

Whether the Defendant acted outside the usual course of professional practice is to be judged objectively by reference to standards of medical practice generally recognized and accepted in the United States, including the State of Florida. However, whether the Defendant acted without a legitimate medical purpose depends on the Defendant's subjective belief whether he was distributing the controlled substance for a legitimate medical purpose. Therefore, in order for the Government to establish that the

Defendant was acting without a legitimate medical purpose, the Government must prove beyond a reasonable doubt that the Defendant did not subjectively believe that he was acting with a good faith belief that he was distributing the controlled substance for a legitimate medical purpose.

A "conspiracy" is an agreement by two or more persons to commit an unlawful act. In other words, it is a kind of partnership for criminal purposes. Every member of the conspiracy becomes the agent or partner of every other member.

The Government does not have to prove that all of the people named in the Second Superseding Indictment were members of the plan, or that those who were members made any kind of formal agreement. The heart of a conspiracy is the making of the unlawful plan itself, so the Government does not have to prove that the conspirators succeeded in carrying out the plan.

The Defendants can be found guilty only if all the following facts are proved beyond a reasonable doubt:

First: That two or more people in some way agreed to try to accomplish a shared and unlawful plan as charged in the Second Superseding Indictment;

Second: That the Defendant knew the unlawful purpose of the plan and willfully joined in it; and

Third: That the object of the unlawful plan was to distribute and dispense, and cause the distribution and dispensing of, oxycodone, hydromorphone, morphine, methadone, hydrocodone, and alprazolam, for no legitimate medical purpose and outside the usual course of professional practice.

A person may be a conspirator even without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the Defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan – and willfully joined in the plan on at least one occasion – that's sufficient for you to find the Defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests doesn't establish proof of a conspiracy. Also a person who doesn't know about a conspiracy but happens to act in a way that advances some purpose of one doesn't automatically become a conspirator.

Controlled Substances –
Possession with Intent to Distribute
21 U.S.C. §841(a)(1)

It's a Federal crime for anyone to knowingly and intentionally distribute, dispense, and cause the distribution and dispensing of, a "controlled substance" not for a legitimate medical purpose and not in the usual course of professional practice.

Oxycodone, hydromorphone, morphine, methadone, hydrocodone, and alprazolam are "controlled substances" within the meaning of the law.

To "distribute" means to deliver a controlled substance to another person, with or without any financial interest in the transaction.

To "dispense" means to deliver a controlled substance to an ultimate user by, or pursuant to, a lawful order of a practitioner, including the prescribing and administering of the controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for delivery.

The term "practitioner" means a physician, pharmacist, or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he or she practices to distribute or dispense, or cause to be distributed or dispensed, controlled substances in the course of professional practice.

The law provides that persons registered under Title 21 to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute or dispense such substances to the extent authorized by their registration. A medical doctor or physician is exempt from the prohibitions of Section 841 when he issues a prescription for a legitimate medical purpose within the usual course of professional practice.

The Defendants, who are licensed medical doctors, can be found guilty of each offense charged pursuant to Section 841 (Counts Two and Counts Five through Nine) only if all the following facts are proved beyond a reasonable doubt:

First: That the Defendant distributed, dispensed, and caused to be distributed and dispensed, the controlled substance(s) as charged; and

Second: That at the time of the distribution and dispensing, the Defendant knew that he was distributing and dispensing a controlled substance not for a legitimate medical purpose and not in the usual course of professional practice.

Whether the Defendant acted outside the usual course of professional practice is to be judged objectively by reference to standards of medical practice generally recognized and accepted in the United States, including the State of Florida. However, whether the Defendant acted without a

legitimate medical purpose depends on the Defendant's subjective belief whether he was distributing the controlled substance for a legitimate medical purpose. Therefore, in order for the Government to establish that the Defendant was acting without a legitimate medical purpose, the Government must prove beyond a reasonable doubt that the Defendant did not subjectively believe that he was acting with a good faith belief that he was distributing the controlled substance for a legitimate medical purpose. You may consider all of the evidence admitted at trial, including, but not limited to, the circumstances surrounding the prescribing of the substance in question, the statements of the parties to the prescription transactions, any expert testimony as to what is the usual course of medical practice, and any other competent evidence bearing on the purpose for which the substances in question were prescribed.

On or About; Knowingly; Willfully – Generally

You'll see that the Second Superseding Indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted "willfully," the person need not be aware of the specific law or rule that his conduct may be violating.

Middle District of Florida
Basic Conjunctive Charge

In these charges, the Court has reviewed the pertinent parts of federal and state statutes (or laws) which are alleged to have been violated. Where a statute specifies several alternative ways in which an offense may be committed, the Second Superseding Indictment may allege the several ways in the conjunctive, that is, by using the word "and;" therefore, if only one of the alternatives is proved beyond a reasonable doubt, that is sufficient for conviction, so long as the jury agrees unanimously as to at least one of the alternatives.

Aiding and Abetting; Agency
18 U.S.C. § 2

It's possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others.

A Defendant "aids and abets" a person if the Defendant intentionally joins with the person to commit a crime.

A Defendant is criminally responsible for the acts of another person if the Defendant aids and abets the other person. A Defendant is also responsible if the Defendant willfully directs or authorizes the acts of an agent, employee, or other associate.

But finding that a Defendant is criminally responsible for the acts of another person requires proof that the Defendant intentionally associated with or participated in the crime – not just proof that the Defendant was simply present at the scene of a crime or knew about it.

In other words, you must find beyond a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

Deliberate Ignorance as Proof of Knowledge

If a Defendant's knowledge of a fact is an essential part of a crime, it's enough that the Defendant was aware of a high probability that the fact existed – unless the Defendant actually believed the fact didn't exist.

"Deliberate avoidance of positive knowledge" – which is the equivalent of knowledge – occurs, for example, if a defendant possesses a package and believes it contains a controlled substance but deliberately avoids learning that it contains the controlled substance so he or she can deny knowledge of the package's contents. So you may find that a defendant knew about the possession of a controlled substance if you determine beyond a reasonable doubt that the defendant (1) actually knew about the controlled substance, or (2) had every reason to know but deliberately closed [his] [her] eyes.

But I must emphasize that negligence, carelessness, or foolishness is not enough to prove that the Defendant had knowledge.

Caution: Punishment
(Multiple Defendants, Multiple Counts)

Each count of the Second Superseding Indictment charges a separate crime against one or more of the Defendants. You must consider each crime and the evidence relating to it separately. And you must consider the case of each Defendant separately and individually. If you find a Defendant guilty of one crime, that must not affect your verdict for any other crime or any other Defendant.

I caution you that each Defendant is on trial only for the specific crimes charged in the Second Superseding Indictment. You're here to determine from the evidence in this case whether each Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether a Defendant is guilty. If you find a Defendant guilty, the punishment is for the Judge alone to decide later.

Joint Proposed Limiting Instruction

You are to consider the confidential informant's statements on the recordings only for what effect those statements had on the other participant in the conversations and for any context that they provide for the other participant's statements. In other words, you are not to consider the confidential informant's statements as proving the truth of anything contained in those statements.

Court's Jury Instruction Regarding Dismissal Of Counts Three and Four

The court instructs you that it has dismissed Counts 3 and 4 against Dr. Duldulao.

Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

{Explain verdict}

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

SPECIAL JURY INSTRUCTION 1

(64B8-9.013 Standards for the Use of Controlled Substances for the Treatment of Pain)

You have heard the term "standards" used throughout this trial. The Florida Board of Medicine has adopted the following standards for the use of controlled substances for pain control:

(a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record shall document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also shall document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) Treatment Plan. The written treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy, if necessary, to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(c) Informed Consent and Agreement for Treatment. The physician shall discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient shall receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician shall employ the use of a written agreement between physician and patient outlining patient responsibilities, including, but not limited to:

1. Urine/serum medication levels screening when requested,

2. Number and frequency of all prescription refills; and,

3. Reasons for which drug therapy may be discontinued (i.e., violation of agreement).

(d) Periodic Review. Based on the individual circumstances of the patient, the physician shall review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy shall depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage and related treatment plans.

(e) Consultation. The physician shall be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention must be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence, as appropriate,
2. Diagnostic, therapeutic, and laboratory results,
3. Evaluations and consultations,
4. Treatment objectives,
5. Discussion of risks and benefits,
6. Treatments,

7. Medications (including date, type, dosage, and quantity prescribed),
8. Instructions and agreements,
9. Drug testing results; and,
10. Periodic reviews. Records must remain current, maintained in an accessible manner, readily available for review, and must be in full compliance with Rule 64B8-9.003, F.A.C., and Section 458.331(1)(m), F.S. Records must remain current and be maintained in an accessible manner and readily available for review.

(g) Compliance with Controlled Substances Laws and Regulations. To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual: An Informational Outline of the Controlled Substances Act of 1970, published by the U.S. Drug Enforcement Agency, for specific rules governing controlled substances as well as applicable state regulations.

SPECIAL JURY INSTRUCTION 2

(F.S. 381.026 Florida Patient's Bill of Rights and Responsibilities)

Florida law provides a patient seeking healthcare certain rights. I will now define some of the rights that are applicable to this trial.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.

A patient is responsible for providing to the health care provider to the best of his or her knowledge accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for his or her actions if he or she does not follow the health care provider's instruction.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

SPECIAL JURY INSTRUCTION 3

(F.S. 458.3265 Pain-Management Clinics)

There is no Florida law or Federal law that prevents a Pain-Management Clinic from advertising.

There is no Florida law or Federal law that prevents a patient from treating at a Pain-Management Clinic whose domicile is located somewhere other than in Florida.

In the State of Florida, every Pain-Management Clinic is inspected annually, including a review of the patient records, to ensure that it complies with the rules of the Florida Board of Medicine.

SPECIAL JURY INSTRUCTION 4

(F.S. 456.44 Controlled Substance prescribing)

You have heard the term "standards" used throughout this trial. The State of Florida has adopted, as law, the following standards for the use of controlled substances for pain control:

The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure. The standards of practice are:

(a) A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the clinician who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each patient's risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient's risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.

(b) Each registrant must develop a written individualized treatment plan for each patient. After treatment begins, the physician shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(c) The physician shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The physician shall use a written controlled substance agreement between the physician and the patient outlining the patient's responsibilities.

(d) The patient shall be seen by the physician at regular intervals, not to exceed 3 months. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.

(e) The physician shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives.

(f) A physician registered under this section must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.
2. Diagnostic, therapeutic, and laboratory results.
3. Evaluations and consultations.
4. Treatment objectives.
5. Discussion of risks and benefits.
6. Treatments.
7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.
9. Periodic reviews.
10. Results of any drug testing.
11. A photocopy of the patient's government-issued photo identification.
12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.
13. The physician's full name presented in a legible manner.

SPECIAL JURY INSTRUCTION 5

(21 U.S.C. § 1306.12 Refilling prescriptions; issuance of multiple prescriptions)

Pursuant to Federal law, an individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:

(i) Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;
(ii) The individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription;
(iii) The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;
(iv) The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and
(v) The individual practitioner complies fully with all other applicable requirements under the Act and these regulations as well as any additional requirements under state law.

Individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing do.

SPECIAL JURY INSTRUCTION 6

Valid Prescription Requirements
Prescription Requirements

An individual (secretary or nurse) may be designated by the practitioner to prepare prescriptions for the practitioner's signature.

SPECIAL JURY INSTRUCTION 7

Valid Prescription Requirements

The Federal legal standard that a controlled substance may only be prescribed, administered, or dispensed for a legitimate medical purpose by a physician acting in the usual course of professional practice has been construed to mean that the prescription must be "in accordance with a standard of medical practice generally recognized and accepted in the United States."

It is not possible to expand on the phrase "legitimate medical purpose in the usual course of professional practice" in a way that will provide definitive guidelines to address all the varied situations physicians may encounter.

While there are no criteria to address every conceivable instance of prescribing, there are recurring patterns that may be indicative of inappropriate prescribing:

1) An inordinately large quantity of controlled substances prescribed or large numbers of prescriptions issued compared to other physicians in an area;
2) No physical examination was given;
3) Warnings to the patient to fill prescriptions at different drug stores;
4) Issuing prescriptions knowing that the patient was delivering the drugs to others;
5) Issuing prescriptions in exchange for sexual favors or for money;
6) Prescribing of controlled drugs at intervals inconsistent with legitimate medical treatment;
7) The use of street slang rather than medical terminology for the drugs prescribed; or
8) No logical relationship between the drugs prescribed and treatment of the condition allegedly existing.

Therefore, each case must be evaluated based on its own merits in view of the totality of circumstances particular to the physician and patient.

SPECIAL JURY INSTRUCTION 8

(Florida Statute 456.42)

The law in Florida in 2013 stated that the prescription for a controlled substance listed in Chapter 893 must only be dated with the abbreviated month written out on the face of the prescription.